

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2002-147-S - ORDER NO. 2002-604 *Wde*

AUGUST 27, 2002

IN RE: Application of Carolina Water Service, Inc.)	ORDER DENYING
for Approval of an Agreement with the Town)	PETITION TO
of Lexington for Bulk Service Collection)	INTERVENE OUT OF
from the I-20 and Watergate Sewage)	TIME FILED BY SC
Collection Facilities Located in Lexington)	DHEC
County, South Carolina.)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition to Intervene Out of Time filed by the South Carolina Department of Health and Environmental Control ("SC DHEC"). For the reasons discussed below, we deny SC DHEC's Petition.

On May 6, 2002, Carolina Water Service, Inc. ("CWS") filed with the Commission an Application seeking (a) approval for CWS to enter into a proposed Wastewater Treatment and Transportation Service Agreement ("Agreement") between the Town of Lexington and CWS and (b) approval, under certain conditions, of the sale of the Watergate sewer system to the Town of Lexington contingent upon the approval of the Central Midlands Regional Council of Governments ("COG") 2001 208 Plan Amendment. Following the filing of CWS' Application, the Commission's Executive Director instructed CWS to publish a prepared Notice of Filing advising the public of the nature of the Application and of the manner and time in which to file with the Commission the appropriate pleadings to be included in the proceedings before the Commission with respect to the Application. The Notice of Filing established a return

date of June 20, 2002, by which date interested persons were to submit appropriate pleadings to be included in the proceedings before the Commission. CWS, thereafter, filed with the Commission an affidavit of publication indicating that CWS had complied with the publication requirement as directed by the Commission's Executive Director in that the Notice of Filing was published on May 10, 2002, in The State newspaper.

On August 12, 2002, the Commission received a Petition to Intervene ("Petition") from SC DHEC in the instant docket. On August 9, 2002, CWS, having been served with a copy of SC DHEC's Petition prior to the Petition being received by the Commission, filed with the Commission an "Opposition to Petition to Intervene filed by Department of Health and Environmental Control" ("Opposition"). On August 14, 2002, SC DHEC filed with the Commission a "Response to CWS's Opposition to DHEC's Petition to Intervene" ("Response"). Thereafter, on August 16, 2002, CWS filed "Carolina Water Service's Reply to Response to Opposition to Petition to Intervene" ("Reply").

By its August 12, 2002, Petition, SC DHEC requests to be admitted to the proceeding as an intervenor. SC DHEC asserts as its grounds for intervention that it is the state agency charged with the responsibility of regulating wastewater facilities under the *Pollution Control Act*, S.C. Code Ann. Section 48-1-10 et seq. (1987 and Supp. 2001) and that SC DHEC has the statutory authority and duty to implement the goals of the *Federal Clean Water Act* and the *Pollution Control Act*. SC DHEC also states that the area comprehensive waste management plans pursuant to Section 208 of the FCWA are a fundamental tool for ensuring adequate wastewater treatment capacity consistent with protection of water quality. As the 208 plan calls for the elimination of the I-20 and

Watergate discharges by connection to regional sewer, SC DHEC asserts that no other party can represent its interests in this matter as SC DHEC has a significant, non-delegable interest in seeing that the 208 plan is implemented.

By its August 12, 2002, Response, SC DHEC requests that the Commission accept the Response along with its Petition as a Petition to Intervene Out of Time. By way of reasoning for its Petition being out-of-time, SC DHEC states that it had filed a complaint with the Commission on December 7, 2001, and had requested the Commission to review certain aspects of the tariff of United Utility Companies, Inc. (“UUC”). Specifically, SC DHEC requested that the Commission examine the pass-through provision of UUC’s tariff which provides that upon interconnection of one of UUC’s sewerage systems with a sewerage treatment system owned by a governmental or other entity that UUC may charge its affected customers on a pro rata basis for the charges that the entity imposes for sewerage treatment. SC DHEC further states that it expected the Commission to hold a hearing on the merits of the Complaint and that SC DHEC would be afforded an opportunity to demonstrate that the complained-of tariff provision thwarts the implementation of areawide 208 Plans. Thereafter, UUC filed a motion to dismiss SC DHEC’s complaint. SC DHEC states that, on August 3, 2002, it received the Commission’s Order No. 2002-556 (dated July 30, 2002), entitled “Order Granting Motion to Dismiss Complaint” and that SC DHEC immediately began to take steps to intervene in the present matter. SC DHEC further states that it did not plan to intervene in the instant matter until it learned of the Commission’s order dismissing SC DHEC’s complaint in the docket involving UUC.

In its Opposition dated August 9, 2002, CWS states that SC DHEC did not comply with the Notice of Filing, published on May 10, 2002, which provided that “[a]ny person who wishes to participate in a hearing, if scheduled, as a party of record with the right of cross-examination should file a Petition to Intervene in accordance with the Commission’s Rules of Practice and Procedure on or before June 20, 2002.” CWS noted that SC DHEC in its Petition did not offer any explanation why the Petition was not timely filed, and CWS requested that SC DHEC’s Petition be denied for failure to timely file the Petition as required by the Notice of Filing.

Thereafter, in its Reply, CWS asserts that SC DHEC’s offered reasoning for the untimely filing of the Petition is unsound. CWS notes that SC DHEC in its Response asserts that it did not plan to intervene in the present case because SC DHEC was party to another case pending before the Commission in which SC DHEC intended to litigate certain related issues. CWS then points out that SC DHEC then asserts in the next paragraph of its Response that SC DHEC has an interest in the instant action that no other party can adequately represent. CWS argues that if SC DHEC does have an interest that no other party can adequately represent, then the existence or nonexistence of another proceeding should not have affected SC DHEC’s decision whether to timely intervene in the present case. CWS offers that SC DHEC’s decision not to timely intervene in the present case was a deliberate decision that SC DHEC apparently regrets and that SC DHEC’s apparent regret is not a valid reason for requesting to intervene out of time.

Upon consideration of this matter, the Commission makes the following findings of fact:

1. The return date in the present case established in the Notice of Filing by which “any person who wishes to participate in a hearing, if scheduled, as a party of record with the right of cross-examination” was June 20, 2002.

2. The Notice of Filing was published on May 10, 2002.

3. SC DHEC did not attempt to intervene in the present case until it filed its Petition on August 12, 2002.

4. On December 7, 2001, SC DHEC filed a Complaint against UUC, wherein SC DHEC requested that the Commission examine the pass-through provision of UUC’s tariff.

5. On August 3, 2002, SC DHEC received a copy of Commission Order No. 2002-556 (dated July 30, 2002) by which order SC DHEC’s Complaint against UUC was dismissed.

6. SC DHEC’s reason for not attempting to intervene at an earlier time was its belief that its Complaint, filed with the Commission on December 7, 2001, wherein SC DHEC requested that the Commission examine certain aspects of the tariff of UUC, would afford SC DHEC the opportunity to litigate certain aspects of UUC’s tariff which may be related to the present case and that SC DHEC was relieved from intervening in the present case.

Based upon the above-stated findings of fact, the Commission concludes that SC DHEC has not stated reasons sufficient for this Commission to grant SC DHEC’s Petition

to Intervene Out of Time in the instant matter. SC DHEC's Complaint requesting review of certain aspects of UUC's tariff did not relieve or absolve SC DHEC from asserting its issues in other proceedings where SC DHEC may raise similar issues. CWS, while a sister company of UUC, was not named in SC DHEC's Complaint against UUC. As such, even had SC DHEC's Complaint against UUC progressed, the rulings from that proceeding would not necessarily have applied to CWS. This Commission concludes that SC DHEC was required to intervene in a timely manner in the present proceeding in order to be a party to this proceeding and to protect the interests which SC DHEC asserts it alone can represent. It is not sufficient for a party to one proceeding to hope that the resolution of that proceeding will protect that party's rights in an entirely separate proceeding. In order to protect its rights, a party must be vigilant and assert its rights in the other proceeding.

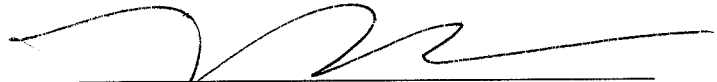
Therefore, the Commission concludes that SC DHEC has failed to state a reason sufficient for this Commission to grant its Petition to Intervene Out of Time in the present proceeding.

IT IS THEREFORE ORDERED THAT:

1. SC DHEC's Petition to Intervene Out of Time in the instant proceeding is denied.

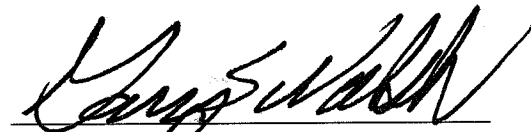
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)